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November 27, 2013

**VIA ELECTRONIC FILING**

United States Magistrate Judge James Orenstein  
United States District Court Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**RE: Phoenix Beverages, Inc. v. ExxonMobil Corp., Case No. 1:2-cv-03771-RMM-JO**

Dear Judge Orenstien:

In accordance with the Court's Order dated November 13, 2013, the parties to the above-referenced case have met and conferred and hereby respectfully submit a jointly proposed schedule for the service of, and response to, all pleadings in this case, and a summary of the status of the pleadings in the case.

With respect to the summary of claims, counterclaims and cross claims, Plaintiffs filed their Complaint in this action against Defendants on July 30, 2012 (Doc. 1). Plaintiffs allege that Defendants are liable jointly and severally under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") § 107 (Count I), the Resource Conservation and Recovery Act ("RCRA") (Count II), common law Private Nuisance, Trespass, Negligence, and Strict Liability (Counts III-VI), and the New York State Navigation Law (Count VII). Defendants served Answers, Counterclaims, and Cross-Claims on February 22, 2013 (Docs. 42 and 44). Defendants' Answers included answers to all Cross-Claims that had been or may be asserted against them by any party in the matter. (Docs. 42 and 44). Plaintiffs filed Answers to Defendants' Counterclaims on March 18, 2013 (Docs. 49 and 50).

On July 1, 2013, Defendants filed Third-Party Complaints against a total of fifty Third-Party Defendants ("TPDs") (Docs. 74 and 75). Defendants alleged that the TPDs may be liable under CERCLA § 107 (Count I), CERCLA § 113 (Counts II and III), and/or under N.Y. C.P.L.R. § 1401 (Count IV).

With respect to the TPDs, Appendix A summarizes all of the claims, counterclaims, and cross-claims asserted to date, and the status of each.

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Appendix B identifies those TPDs who hereby move to additionally be encompassed by the Court's previous Orders as to certain TPDs, in which the Court granted extensions of their time to answer or to renew their request for a pre-motion conference on the basis that they seek to move to dismiss Third Party Plaintiffs' CERCLA § 107 claim until 14 days after Judge Irizarry decides a similar motion in *DMJ v. Capasso, et al.*, CV-97-7285.

Appendix C identifies those TPDs who hereby move to additionally be encompassed by the Court's November 12 Order, in which the Court granted the motion to stay (Doc. 238) answers to cross-claims by certain TPDs until all third-party defendants have answered the third-party complaints and a conference is scheduled at which the case management order for the third-party action is addressed.

Appendix D identifies those TPDs who have not appeared, responded to the Third-Party Complaint or moved for an extension of time to do so. Because they have failed to appear altogether, we have not been able to reach them to determine their positions on this jointly proposed schedule for service of, and response to, all pleadings in this case.

As noted, all parties who have appeared in this action consent to this proposed schedule, which, inter alia, seeks to extend the dates for TPDs' answers to the third-party complaint and cross-claims.

Very truly yours,  
**Hunsucker Goodstein PC**

/s/ Stacey H. Myers

Stacey H. Myers

Enclosures: Appendices A, B, C and D

Appendix A  
Third-Party Defendant Case Summary  
(November 27, 2013)

No.	Third-Party Defendants	Answer Filed	Counter-Claim Filed	Cross-Claim Filed	Answers Stayed	Cross-Claim Answers Stayed
1	Ace Waste Oil, Inc.	No	No	No	No	No
2	Active Oil Service (Not served as of 11/26/2013)	No	No	No	No	No
3	Alcoa Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
4	Andax Environmental Corp. (Not served as of 11/26/2013)	No	No	No	No	No
5	Avco Corporation	No	No	No	Yes (DE 97, 98) Orders 9/25/13; 9/27/13	Yes (DE 238) Order 11/12/13
6	BASF Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
7	Beazer East, Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
8	BorgWarner, Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
9	Carrier Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
10	ConocoPhillips Co.	Yes	Against All TPPs	Against All TPDs	No	Yes (DE 238) Order 11/12/13
11	Crosman Corporation	Yes	Against All TPPs	No	No	Yes (DE 238) Order 11/12/13
12	Crown, Cork & Seal, Inc.	No	No	No	Yes (DE 164, 165) Order 10/28/13	Yes (DE 238) Order 11/12/13
13	Electric Boat Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
14	Emhart Technologies LLC	No	No	No	Yes (DE 121) Orders 9/25/13; 9/27/13	Yes (DE 238) Order 11/12/13
15	Ford Motor Company	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
16	Hertz Corporation	No	No	No	No	No
17	Honeywell International, Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
18	Industrial Development Corp	No	No	No	No	No
19	Ingersoll Rand Company	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
20	Kraft Food Global Inc.	Yes	Against All TPPs	Against All TPDs	No	Yes (DE 238) Order 11/12/13
21	Marlin Firearms Company	No	No	No	No	No
22	NEAPCO, Inc.	Yes	Against All TPPs	Against All TPDs	No	Yes (DE 238) Order 11/12/13
23	New York City Transit Authority	Yes	Against All TPPs	No	No	Yes (DE 238) Order 11/12/13
24	NL Industries, Inc.	Yes	Against All TPPs	Against All TPDs	No	Joins (DE 238) by (DE 291)
25	Novelis Corporation	Yes	No	No	No	Yes (DE 238) Order 11/12/13
26	Northrop Grumman Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
27	Peabody International Corporation	No	No	No	Yes (DE 225) Order 11/4/13	Yes (DE 238) Order 11/12/13
28	Quality Carriers, Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
29	Procter & Gamble Haircare LLC	Yes	Against All TPPs	No	No	Yes (DE 238) Order 11/12/13

No.	Third-Party Defendants	Answer Filed	Counter-Claim Filed	Cross-Claim Filed	Answers Stayed	Cross-Claim Answers Stayed
30	Rexam Beverage Can Company	No	No	No	Yes (DE 81, 82) Orders 9/25/13; 9/27/13	Yes (DE 238) Order 11/12/13
31	Reynolds Metals Co.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
32	Revere Copper Products, Inc.	Yes	Against All TPPs	No	No	No
33	River Terminal Development	Yes	Against All TPPs	Against All TPDs	No	Yes (DE 238) Order 11/12/13
34	Rockwell Automation/Rockwell Intl	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
35	Sikorsky Aircraft Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
36	Simmonds Precision Products, Inc. (joint stip. of dismissal w/o prejudice DE 308, 11/26/2013)	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
37	Stanley Black & Decker, Inc.	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238) Order 11/12/13
38	Sunoco, Inc.	No	No	No	Yes (DE 102, 103) Orders 9/25/13; 9/27/13	Yes (DE 238) Order 11/12/13
39	TDY Industries, LLC	No	No	No	Yes (DE 289) Order 11/12/13	Yes (DE 238) Order 11/12/13
40	United Site Services	No	No	No	No	No
41	United States of America <sup>1</sup>	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
42	United States Department of Defense	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
43	United States Department of the Air Force	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
44	United States Department of the Army	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
45	United States Department of the Coast Guard	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
46	United States Department of the Navy	No	No	No	Yes (DE 171) Order 10/28/13	Yes (DE 238) Order 11/12/13
47	United Technologies Corporation	No	No	No	Yes (DE 193) Order 10/31/13	Yes (DE 238); Order 11/12/13
48	Wallace Industries, Inc.	Yes	No	No	No	No
49	Waste Management of Maryland, Inc.	No	No	No	Yes (DE 292) Order 11/13/13	Yes (DE 290) Order 11/13/13
50	Wyman Gordon Company	Yes	No	No	No	No

<sup>1</sup> Whereas the Federal TPDs who concurred in the motion for a stay of cross-claim answers included all six Federal TPDs (as listed at #41 to #46 of this Appendix), the list of TPDs set forth in Exhibit 1 to the motion (DE 238) inadvertently omitted the United States of America. This Appendix assumes that the November 12, 2013 Order granting the stay was intended to include all of the TPDs listed on Exhibit 1 to the motion as well as Federal TPD United States of America.

Appendix B

List of third-party defendants (“TPDs”) to additionally be encompassed by the Court’s previous Orders as to certain TPDs, in which the Court granted extensions of their time to answer or to renew their request for a pre-motion conference on the basis that they seek to move to dismiss Third Party Plaintiffs’ CERCLA §107 claim until 14 days after Judge Irizarry decides a similar motion in *DMJ v. Capasso, et al.*, CV-97-7285.

ConocoPhillips

Crosman Corporation

Kraft Global Food

NEAPCO, Inc.

New York Transit Authority

NL Industries, Inc.

Novelis Corporation

Peabody International Corporation

Proctor & Gamble Haircare LLC

River Terminal Development

United Site Services

Appendix C

List of third-party defendants to additionally be encompassed by the Court's November 12 Order, by which the Court granted the motion to stay (Docket No. 238) answers to cross-claims by certain TPDs until all third-party defendants have answered the third-party complaints and a conference is scheduled at which the case management order for the third-party action is addressed.

NL Industries, Inc.

Revere Copper Products, Inc.

United Site Services

Wyman Gordon Company

Appendix D

List of third-party defendants who have not answered the third-party complaint and/or have not been reached to determine their positions on this jointly proposed schedule for service of, and response to, all pleadings in this case.

Ace Waste Oil, Inc.	(No Answer on docket)
Active Oil Service	(No Answer on docket)
Andax Environmental Corp	(No Answer on docket)
Hertz Corporation	(No Answer on docket)
Industrial Development Corp.	(No Answer on docket)
Marlin Firearms Company	(No Answer on docket)
Wallace Industries	(Answer on docket)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of November, 2013, I electronically filed and served the foregoing document in response to the Court's November 13, 2013 ORDER, with the Clerk of the Court for the United States District Court Eastern District of New York by using the CM/ECF system. I certify that the following counsel in the case are registered CM/ECF users and will be served via the CM/ECF system:

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*/s/ Stacey H. Myers*

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